

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA

v.

DAVID CLARENCE WARD,

Defendant.

Case No. 1:02CR00078

ORDER

By: James P. Jones
United States District Judge

The defendant, David Clarence Ward, previously submitted a letter asking for appointment of counsel to assist him in seeking relief under 28 U.S.C. § 2255, based on a recent court decision. (ECF No. 19.) I construed Ward's letter conditionally as a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. I notified Ward of his option to object to this construction, or to elect to proceed under § 2255 by filing a properly executed § 2255 motion. *See Castro v. United States*, 540 U.S. 375 (2003). I also notified Ward that failure to comply with the order, either by objecting or by submitting a proper § 2255 motion, the conditionally filed § 2255 motion would be dismissed without prejudice.

Ward's response time has elapsed and he has had no further communication with the court. Because he has neither objected nor adopted the conditional

construction of his letter as a § 2255 motion, it is **ORDERED** that the § 2255 action (ECF No. 19) is **DISMISSED WITHOUT PREJUDICE** and stricken from the active docket of the court. Based upon the court's finding that the defendant has not made the requisite showing of denial of a substantial right, a certificate of appealability is **DENIED**.

The clerk will send a copy of this order to the defendant.

ENTER: March 4, 2014

/s/ James P. Jones
United States District Judge